

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLARENCE LORENZO HAYES,

Defendant-Appellant.

UNPUBLISHED

December 18, 2003

No. 242149

Oakland Circuit Court

LC No. 1999-169734-FH

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Defendant appeals as of right from a sentence of eighteen months to fifteen years for a conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), following a determination that he violated his probation for the third time. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that defendant violated his probation. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991); *People v Taylor*, 104 Mich App 514, 516; 305 NW2d 251 (1981). The probation officer testified, and defendant freely admitted, that defendant failed to participate in the home confinement (tether) program as ordered by the court after the previous violation hearing. Although defendant asserted that he attempted to participate but was unable to obtain a proper phone connection despite his best efforts, the court was not obliged to accept defendant's explanation when defendant had had two months to comply. The trial court's ruling indicates that the court was aware of the issues in the case and correctly applied the law, and thus its findings were sufficient. *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992).

Prior to sentencing, the court was not required to have a completely new presentence report; an updated report is sufficient when the defendant is resentenced. *People v Triplett*, 407 Mich 510, 515; 287 NW2d 165 (1980); *People v Martinez (After Remand)*, 210 Mich App 199, 202; 532 NW2d 863 (1995), implicitly overruled on other grounds by *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995). Here, the court had an updated probation report prepared not long before sentencing. Although not called an updated presentence report, it detailed defendant's progress on probation since his original sentence date, and recommended revocation of probation and imposition of a jail term. It appears that the parties utilized this as an updated report. Defense counsel noted that he had reviewed the probation department's

recommendation with defendant, and it does not appear that requiring a formally captioned presentence report containing the same information would have served any purpose.

Defendant's claim that his sentence was disproportionate is without merit. Defendant's minimum sentence was within the minimum sentence range established by the legislative sentencing guidelines. MCL 777.21(3)(c); MCL 777.67. "Under MCL 769.34(10), this Court may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines." *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002).

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White